

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DESTRY E. THOMAS, #1257786	§	
VS.	§	CIVIL ACTION NO. 9:06cv51
JIMMIE R. PACE, ET AL.	§	

ORDER OF DISMISSAL

Plaintiff Destry E. Thomas, an inmate previously confined at the Eastham Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the lawsuit should be dismissed pursuant to the “three strikes” provision of 28 U.S.C. § 1915(g) and for all purposes pursuant to 28 U.S.C. § 1915A(b)(1). The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the Plaintiff are without merit. The Plaintiff had three or more cases and/or appeals dismissed as frivolous before he filed the present lawsuit. He failed to show that the exception to § 1915(g) is applicable, which requires him to show that he was under imminent danger of serious physical injury when he filed the lawsuit. He also failed to satisfy the requirements for bringing a civil rights

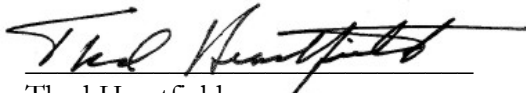
lawsuit about a prison disciplinary case as outlined by the Supreme Court in *Edwards v. Balisok*, 520 U.S. 641, 648 (1997). The objections lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the cause of action is **DISMISSED** with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g) and **DISMISSED** with prejudice for all purposes pursuant to 28 U.S.C. § 1915A(b)(1). It is further

ORDERED that the Plaintiff's *in forma pauperis* status is revoked. He may resume the lawsuit if he pays the entire filing fee of \$250 within thirty days from the entry of this order. *See Carson v. Johnson*, 112 F.3d 818, 823 (5th Cir. 1997). It is finally

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this the 11 day of **April, 2006**.


Thad Heartfield
United States District Judge